IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1127 OF 2004.

Rasul Gulab Sheikh. ... Petitioner
Versus.
State of Maharashtra & anr. ... Respondents.

Shri Dube Patil holding for Ms.Niranjani Shetty for the Petitioner.

Shri K.V.Saste, A.P.P. for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 20th July, 2005.

P.C.:

1. Heard the learned Counsel for the Petitioner and the learned A.P.P. for the Respondents. The challenge in this petition is to the order of externment under section 56(1)(a)(b) of the Bombay Police Act, 1951. The first submission of the learned Counsel for the Petitioner is that in the show cause notice issued in July 2003, the authorities have referred to in-camera statements of three witnesses, a, b and c without giving any material particulars whatsoever of the said statements. He pointed out that while passing the order of externment on 3rd October 2003, reliance was placed by the authority on the said secret statement. He submitted that in view of the settled position of law, the order of externment is illegal and deserves to be set aside. The learned A.P.P. has supported the impugned Judgment and Orders.

2. I have considered the submissions. A perusal of the show cause notice shows that the authority has relied upon four offences registered against the Petitioner and thereafter in the second last paragraph of the notice it is stated as under:

> "Against your criminal tendencies, the secret witness a,b,c have deposed before the Police."

In the order of externment passed on 3rd October 2003, the authority has observed as under:

> . "There are secret witnesses testified against him, who have stated that, the Accused is cruel, vengeful, and adament in nature and behaviour, there is threat from him to the peoples life and property. The witnesses are petrified to depose statement against him, on the condition that, there statement shall be kept secret, they were testified."

3. A perusal of the show cause notice shows that it meerely refers to secret statements of witnesses a, b and c without giving details. General nature of material allegations in the said statements is not indicated in the notice. All that show cause notice recites is that secret witnesses a, b and c have deposed

against the Petitioner. However, in the order of externment there is a reference to general allegations made in the said statements. Therefore, the show cause notice is contrary to requirement of section 59 of the Bombay Police Act, 1951. Consequently, the order of externment is illegal and is liable to be quashed and set aside.

4. Accordingly the following order is passed:

(i) The impugned order of externment dated 3rd October 2003 (Exh.C to the petition) is quashed and set aside.

(ii) Rule is made absolute accordingly.

Judge.